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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,006	08/17/2004	Jack Klootz	10885.3802	5005
22235	7590	10/14/2005	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA			LE, KHANH H	
1936 S ANDREWS AVENUE				
FORT LAUDERDALE, FL 33316			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,006	KLOOTZ, JACK	
	Examiner Khanh H. Le	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 September 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/20/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway et al. (US Patent No. 5,774,271) in view of Lehrer (US Patent No. 6,604,847 B2).
3. With respect to claim 1 and 2, Lagerway teaches a surgical headlight system having a means (Fig. 3, item 38) for attaching the headlight housing to a surgeon's head band or cap for illumination purposes, having a headlight housing (Fig. 3, item 32), a lens assembly (item 40) in optical communication with the output of the fiber optic rod (cable, item 19), and a light path (optical axis, item 41) from the lens assembly in the headlight housing to emit light outside the headlight housing to a surgical area. Lehrer teaches a surgical headlight attachable to a surgeon's headband or cap (Fig. 11) using LEDs as the light source (Fig. 2, item 33) and an electrical power source (Fig. 5, item 52). Such an arrangement is less expensive to produce and less cumbersome for the user because it does not use fiber optic cable as taught by Lehrer (Col. 1, lines 28-30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the LED light source as taught by Lehrer in the surgical headlight of Lagerway so that it would cost less to produce and be less cumbersome for the user.

4. With respect to claim 4, Lagerway discloses the surgical headlight assembly having a mirror (Fig. 3, item 60) mounted in the light path (optical axis, item 41) from the lens assembly (items 40) to the housing light outlet (item 36).

5. With respect to claim 5, Lagerway teaches a compact headlight for surgery having a small, lightweight housing (Fig. 3, item 33) with an opening for emitting light (item 36), a direct light optical channel formed by a fiber optic rod (item 19) and a pair of collimating lenses (items 42 and 44, and Col.1, lines 14-15) in optical communication with the fiber optic rod. Lagerway does not teach a surgical headlight having an LED as a light source.

Lehrer teaches a surgical headlight (Fig. 11) use by surgeon or doctor (Col. 6, lines 4-5) having an LED as the light source (Fig. 2, item 33). As noted above, this is less expensive to produce and less cumbersome to use.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the LED light source as taught by Lehrer in the surgical headlight of Lagerway so that it would cost less to produce and be less cumbersome for the user.

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6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway and Lehrer as applied to claim 1 and 2 above, and further in view of Gonser et al. (US Patent No. 5,003,434)

7. With respect to claim 3, Lagerway teaches the construction of the surgical headlight but lacks mention of the color temperature that can be produced by the light source.

Lehrer teaches that white light with color temperature above 7000K (Col. 6, lines 20-28) is more desirable for medical diagnostic purpose (Col. 6, lines 38-41) and therefore, an LED is more desirable than incandescent light since it can produce white light above 7000K (Col. 6, lines 20-28).

Gonser teaches that the highest efficiency of eye response in dental operation occurs when the color rendering index of the light used for examination purpose is with the light source having color temperature at about 5500K (Col. 8, lines 57-64).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the light source in the surgical headlight of Lagerway with an LED at about 5500K as taught by Lehrer and Gonser so that the surgical headlight of Lagerway can be used for dental operation purposes with the highest efficiency of eye response.

### ***Response to Arguments***

8. Applicant's arguments filed September 12, 2005 have been fully considered but they are not persuasive.

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9. In response to applicant's initial arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

11. The examiner has not applied an "obvious to try" standard. The cited references are for headlights used by surgeons or doctors. Lagerway et al. (Col. 3, lines 47-48) and Lehrer (Col. 6, lines 4-5, and Fig. 10, and 11) teach every point in all claims. Lagerway's headlight does not have any LED inside the housing. However, Lehrer discloses the use of a LED inside the headlight housing. Lehrer teaches that having the LED inside the headlight housing can eliminate the external light source and the fiber optic cable. Therefore, the headlight is less expensive to produce and less cumbersome for the surgeon (Col. 1, line 28-30).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Kloots (US Patent No. 4,104,709) discloses a pair of condensing lenses, and Ibusuki et al. (US Patent No. 4,897,772) discloses a dental astral lamp having light color temperature of 5500K.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is (571) 272-8325. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on (571) 272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khanh H. Le  
Examiner  
Art Unit 2875

KHL



RENEE LUEBKE  
PRIMARY EXAMINER